

ATTORNEY DOCKET NO.
069078.0104

PATENT APPLICATION
09/844,170

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Paul KLOCEK, et al.
Serial No.: 09/844,170
Filed: April 25, 2001
Group No.: 2874
Examiner: Hemang SANGHAVI
Notice of Allowance Mailed: June 18, 2003
Confirmation No: 1739
Title: METHOD AND APPARATUS FOR
SWITCHING OPTICAL SIGNALS WITH
A PHOTON BAND GAP DEVICE

RECEIVED

SEP 09 2003

OFFICE OF PETITIONS

ATTENTION: PETITIONS EXAMINER
FRANCES HICKS

MAIL STOP PETITION

Office of Petitions in the
Office of the Deputy
Commissioner for Patent
Examination Policy
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

URGENT

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130.00 OP

Dear Sir:

PETITION UNDER 37 C.F.R. §1.313(c) (2)

FOR WITHDRAWAL FROM ISSUE

Pursuant to the provisions of 37 C.F.R. §1.313(c) (2), it is respectfully requested that this application be withdrawn from issue for consideration of a Request for Continued Examination under 37 C.F.R. §1.114. The present situation was discussed by telephone with Petitions Examiner Frances Hicks

on September 5, 2003, and this Petition and its enclosures are being hand-carried to the Office of Petitions.

In more detail, and to avoid confusion, Applicants wish to point out that the present situation is very similar to a prior situation which arose in this same application about eight months ago. A prior Notice of Allowance was mailed on October 2, 2002, the issue fee was paid, and then Applicants filed a Petition to withdraw the application from issue, in order to permit filing of a Request for Continued Examination (RCE) and an Information Disclosure Statement (IDS) citing art from the Search Report of a corresponding PCT application. Petitions Examiner Hicks issued a Decision on January 22, 2003, which granted that prior Petition.

Thereafter, a second Notice of Allowance was mailed on June 18, 2003, and the issue fee was paid. As it turns out, however, Applicants filed two PCT applications which each had text and drawings that are effectively identical to the text and drawings of the present U.S. application. The first PCT application designated certain foreign countries of interest, and the second PCT application was filed later in order to designate some additional foreign countries of interest. The second PCT application resulted in the recent issuance of a second PCT Search Report, and the second PCT Search Report cites some documents which are not of record in the present U.S. application, and which Applicants wish to submit with an Information Disclosure Statement.

Accordingly, this Petition is being hand carried to the Petitions Branch of the PTO to request that the present application be immediately withdrawn from issue under 37 C.F.R. §1.313(c)(2), in order to permit consideration of a Request for Continued Examination (RCE) under 37 C.F.R. §1.114. The RCE request is being filed concurrently with this

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Petition. As explained in the accompanying RCE request, the "submission" required in association with the RCE request will be the Information Disclosure Statement mentioned above, which is being filed concurrently herewith. Applicants are also concurrently filing an Amendment. The undersigned has been advised by the Office of Publications that the present application has not yet been assigned an issue date.

Petition Fee Required Under 37 CFR \$1.17(h)

Applicants are enclosing a check in the amount of \$130.00 to cover the petition fee (Fee Code 1460) required under 37 CFR §§ 1.313 and 1.17(h).

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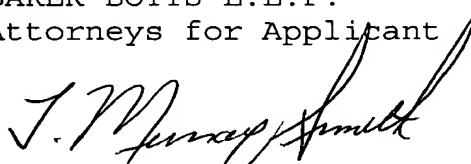
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Deposit Account Authorization for Excess/Deficiency

The Commissioner is hereby authorized to credit any overpayment, or to charge any additional fee required by this paper, to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorneys for Applicant



T. Murray Smith
Reg. No. 30,222
(214) 953-6684

BAKER BOTTS, L.L.P.
2001 Ross Avenue
Suite 600
Dallas, TX 75201-2980
(214) 953-6500

Date: September 8, 2003

Enclosures: Request for Continued Examination
Checks (\$130.00 and \$750)
Third Information Disclosure Statement,
with enclosures
Amendment
Acknowledgment Post Card